

# United States Senate

WASHINGTON, DC 20510-2002

July 11, 2003

Alberto R. Gonzales  
Counsel to the President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. Gonzales:

We are writing to you regarding the nomination of judges to the United States Court of Appeals for the Fourth Circuit, which has fifteen authorized seats. In particular, we write about the recent nomination of Claude A. Allen to the judgeship left vacant by the death of the esteemed jurist Francis D. Murnaghan, Jr. This proposed appointment would shift a seat that has traditionally been allocated to Maryland to Virginia.

This shift runs directly contrary to your recent memorandum to us setting out the criteria you will be following in allocating seats in the Fourth Circuit. In that memorandum, you noted that you would seek geographical balance so that a State has a number of judges sitting in that State corresponding to the State's percentage of the overall population of the Circuit. You went on to say that the current allocation of the Fourth Circuit is "significantly out of balance" and that President Bush intends to nominate individuals to Fourth Circuit vacancies "in a manner that will bring the circuit closer to geographic balance" (although the Administration did not do so when it nominated Judge Shedd thereby giving South Carolina, with fifteen percent of the population of the Circuit, four of the fifteen judges, i.e. twenty-seven percent).

Shifting a seat from Maryland to Virginia will lead to the substantial underrepresentation of Maryland on the Fourth Circuit. According to 2000 Census figures, Maryland's population makes up twenty percent of the population of the Fourth Circuit. Therefore, Maryland should be allocated three judges in order to be proportionally represented on the Circuit with twenty percent of the judicial positions. Clearly in this instance, your own standard calls for a deceased Maryland judge to be replaced by a Marylander.

As we have in the past, we remain committed to working with the Administration on the selection of nominees for Maryland's Federal judicial vacancies. We both supported the nominations of Richard D. Bennett and William D. Quarles, Jr. to Maryland's Federal District Court. Despite the current tension surrounding judicial nominations, Judges Quarles and Bennett were confirmed expeditiously and we both appeared before the Judiciary Committee in support of each nominee. Judges Quarles and Bennett are now serving on the District Court and we expect them to make valuable contributions to the Federal bench.

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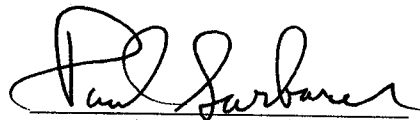
We are likewise committed to working with the President to find an appropriate Maryland nominee for the seat held by Judge Murnaghan on the Fourth Circuit. We earlier raised concerns about two individuals the Administration considered nominating to this Maryland vacancy because of the individuals' lack of involvement in Maryland's legal and civic communities. In previous discussions, we clearly communicated to you our threshold standards when considering potential nominees – standards that apply regardless of the political party of the nominee or Administration, or the Court to which an individual is nominated. Moreover, we both supported the last Republican nominee to the Fourth Circuit, Paul Niemeyer, appointed by President George H.W. Bush, and praised his "record of professional practice and public service" and his "significant contributions to the legal profession in Maryland."

Throughout the years, we have worked with every Administration to protect the integrity and excellence of the Maryland Federal bench, and to ensure that all nominees from Maryland have a record of service in the Maryland legal community and in the community at large that has elevated them to positions of respect in the State. We cannot accept the shifting of a seat away from Maryland, which has twenty percent of the Circuit's population and should be allocated three of its fifteen judges. Maryland's legal community is uniquely active and experienced, and the breadth of the profession in our State includes deserving and well-qualified potential jurists. We stand ready to assist you in your selection of a Maryland candidate to fill this most important Fourth Circuit judgeship.

Sincerely,



Barbara A. Mikulski  
United States Senator



Paul S. Sarbanes  
United States Senator